



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,538	03/11/2005	Chester Sutterlin	072US1	8929

Nuvasive
Portfolio IP
P O Box 52050
Minneapolis, MN 55402

7590

01/18/2007

EXAMINER

CUMBERLEDGE, JERRY L

ART UNIT

PAPER NUMBER

3733

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/18/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/527,538

Applicant(s)

SUTTERLIN ET AL.

Examiner

Jerry Cumberledge

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-57 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 March 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 03/11/2005.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "protector" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

Claims 22-28 are objected to because of the following informalities: In claim 22, the term "a handle member" appears. Claim 26, which is dependent on claim 22, also includes the term "a handle member" It is unclear whether this is the same "a handle member" recited in claim 22, or whether this is a second, distinct handle member. Appropriate correction/clarification is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 30 and 40-57 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 30 recites the limitation "the same cross-sectional shape" in line 8. There is insufficient antecedent basis for this limitation in the claim.

Claim 40 recites the limitation "said body" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 3733

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-7, 9, 17-26, 28-30 and 36-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Ouchi (US Pat. 5,899,850).

Ouchi discloses a device for removing body tissue, comprising: a brush member (Fig. 1, ref. 2) dimensioned for introduction into a body, said brush member having a plurality of bristle members (Fig. 1, ref. 2a) (column 5, lines 15-17) defining a capacity for carrying body tissue, said brush member capable of being manipulated within said body to thereby receive body tissue within said brush member such that said body tissue may be carried and thereafter removed from said body. The capacity for carrying body tissue is defined by at least one of the space between said bristle members and the space between groupings of said bristle members. The bristle members are grouped to define at least one generally helical space (Fig. 1, ref. 2) for receiving and carrying body tissue therein. The bristle members are grouped to define at least one generally axial space for receiving and carrying body tissue therein (Fig. 1, since an axis can be drawn at an angle through the space defined by the groups of bristles). The bristle members are grouped to define at least one generally arcuate space (Fig. 1, ref. 2) for receiving and carrying body tissue therein. The bristle members are disposed in a generally solid configuration (Fig. 1, ref. 2) (Fig. 4, ref. 20) with spacing sufficient to

Art Unit: 3733

receive and carry body tissue between said bristle members. The brush member has at least one of a generally cylindrical (Fig. 4, ref. 20), generally elliptical, and generally polygonal cross-sectional shape. The brush member is generally cylindrical (Fig. 1, ref. 2). The device further includes a stem member (Fig. 1, refs. 1) extending from said brush member for use in manipulating said brush member within said body. The stem member is generally cylindrical (Fig. 1, ref. 1). The stem member is equipped with a quick-connect coupling for engaging with at least one of a handle member (column 11, lines 48-58) and an extension member. The bristle members are generally cylindrical in cross-section (Fig. 4, ref. 20). The brush member is dimensioned to be introduced into an intervertebral space to receive, carry, and remove intervertebral disc material. The brush member is used to remove intervertebral disc material in order to thereafter introduce a spinal implant into said intervertebral space. The brush member is dimensioned to be introduced into a vertebral body to receive, carry, and remove osseous material.

Ouchi discloses a system for removing body tissue, comprising: a brush member (Fig. 9, ref. 2) dimensioned for introduction into a target site within a body, said brush member having a plurality of bristle members (Fig. 9, ref. 2b) (column 5, lines 15-17) defining a capacity for carrying body tissue, said brush member capable of being manipulated within said body to thereby receive body tissue within said brush member such that said body tissue may be carried and thereafter removed from said body; and a protector (Fig. 9, ref. 5) dimensioned to be positioned near an entrance into said target site, said protector establishing a barrier between said brush member and at least a

Art Unit: 3733

portion of the body tissue adjacent to said entrance (since the protector can cover the brush member, Fig. 9). The protector comprises a cannula (Fig. 9, ref. 5) dimensioned to extend to said entrance of said target site, said cannula having an inner lumen (Fig. 9, ref. 14B) dimensioned to slideably receive said brush member for passage into said target site (column 1, lines 21-25). The cannula includes a handle member (Fig. 24, ref. 1002) for directing said cannula to said entrance of said target site. The brush member includes a stem member (Fig. 1, refs. 1), and further comprising a drive assembly capable of engaging with said stem member for manipulating said brush member within said target site. The drive assembly comprises one of a powered drive assembly coupled to said stem member and a manual drive assembly coupled to said stem member. The powered drive assembly is a power drill. The manual drive assembly includes a handle member (Fig. 24, ref. 1002) capable of being coupled to said stem member (Fig. 24). The manual drive assembly includes an extension member (Fig. 9, proximal portion of ref. 1, the portion closer to the handle) coupled to said handle. The drive assembly includes a stop member (Fig. 1, ref. 3) coupled to said stem member for controlling the depth to which said brush member can be advanced into said target site (since when the stop member ref. 3 abuts tissue, it will prevent the brush member from moving forward). The body tissue adjacent to said entrance includes at least one of neural tissue, dura tissue, and vasculature adjacent to the spine, and wherein said cannula includes a lip member (Fig. 9, left end of the cannula of ref. 5) at a distal end thereof dimensioned to retract at least one of said neural tissue, dura tissue, and vasculature. The inner lumen of said cannula and said brush member have

Art Unit: 3733

approximately the same cross-sectional shape (Fig. 8). The body tissue adjacent to said entrance includes at least one of neural tissue and dura tissue of the spine. The retractor includes a handle assembly (column 8, lines 47-54). The target site is an intervertebral space, and wherein the brush member is dimensioned to be introduced into said intervertebral space to receive, carry, and remove intervertebral disc material. The brush member is used to remove intervertebral disc material in order to thereafter introduce a spinal implant into said intervertebral space. The target site is a vertebral body, and wherein said brush member is dimensioned to be introduced into said vertebral body to receive, carry, and remove osseous material. The brush member and protector may be employed to remove body tissue during at least one of a percutaneous surgical procedure and an open surgical procedure.

With regard to statements of intended use and other functional statements (e.g. ...a capacity for carrying body tissue..., ...capable of being manipulated..., ...dimensioned to be introduced into an intervertebral space to receive, carry, and remove intervertebral disc material..., ...is used to remove intervertebral disc material..., ...may be employed to remove body tissue...), they do not impose any structural limitations on the claims distinguishable over the device of Ouchi, which is capable of being used as claimed if one so desires to do so. *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Furthermore, the law of anticipation does not require that the reference "teach" what the subject patent teaches, but rather it is only necessary that the claims under attack "read on" something in the reference. *Kalman v. Kimberly Clark Corp.*, 218 USPQ 781 (CCPA 1983).

Art Unit: 3733

Furthermore, the manner in which a device is intended to be employed does not differentiate the claimed apparatus from prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

With regards to apparatus claims reciting specific body tissues (e.g. neural tissue, dura tissue, vascular tissue), it is noted that a claim directed to or including within its scope a human is not considered to be patentable subject matter under 35 U.S.C. 101. The grant of a limited, but exclusive property right in a human being is prohibited by the Constitution. In re Wakefield, 422 F.2d 897, 164 USPQ 636 (CCPA 1970). The Examiner is treating the first occurring recitations of the tissues in the claims (e.g. claim 1, "...for carrying body tissue...") as being functionally recited and not as being positively recited. Furthermore, claim elements in subsequent dependent claims referring to body tissue (e.g. claim 29, "...body tissue...includes at least one of neural tissue, dura tissue...") are also being considered as being functionally recited. As such, the Examiner is not rejecting these claims under 35 U.S.C. 101. If the claims are amended as to positively recite the body tissue they will then be subject to rejection under 35 U.S.C 101.

Claims 40-47, 49-52 and 57 are rejected under 35 U.S.C. 102(e) as being anticipated by Reiley et al. (US Pat. 6,440,138).

Reiley et al. disclose a method for removing body tissue, comprising the steps of: creating a working channel from a patient's skin to a surgical target site (Fig. 23) (column 9, lines 6-10); inserting a brush member into said surgical target site (Fig. 26) (column 9, lines 49-58), said brush member having a plurality of bristle members (Fig.

Art Unit: 3733

26, ref. 46) defining a capacity for carrying body tissue (since body tissue will stick to the bristles and tissue can also be moved using two of the bristles in tandem); manipulating said brush member within said body (column 5, lines 66-67, and column 6, lines 1-6) to receive body tissue within said brush member (which will occur as the brush member spins and tissue is moved between the bristles); and removing said brush member from said surgical target site (column 10, lines 28-30). The step of creating a working channel to the surgical target site is accomplished via at least one of a percutaneous surgical procedure and an open surgical procedure (Fig. 23) (column 9, lines 6-10). The surgical target site is an intervertebral disc space (column 3, lines 37-46), and wherein said step of inserting a brush member includes, prior to said step of inserting said brush member, positioning a protector (Fig. 10, ref. 144) (column 5, lines 56-57) near an entrance into said intervertebral disc space for establishing a barrier between said brush member and at least one of neural tissue, dura tissue, and vasculature adjacent to said entrance (column 3, lines 37-46). The protector comprises a cannula (Fig. 10, ref. 144) (column 5, lines 56-57) dimensioned to extend to said entrance of said intervertebral disc space, said cannula having an inner lumen (Fig. 10, near arrow of ref. 138) dimensioned to slideably receive said brush member for passage into said intervertebral disc space (column 5, lines 56-61). The brush member includes a stem member (Fig. 10, ref. 142), and further including the step of providing a drive assembly (Fig. 26, ref. 56) capable of engaging with said stem member for manipulating said brush member within said target site. The drive assembly comprises one of a powered drive assembly coupled to said stem member (Fig. 26, ref. 56) (column 9, lines

Art Unit: 3733

59-60) and a manual drive assembly coupled to said stem member. The powered drive assembly is a power drill (Fig. 26, ref. 56) (column 9, lines 59-60). The manual drive assembly includes a handle member (Fig. 8, ref. 52) capable of being coupled to said stem member. The manual drive assembly includes an extension member (Fig. 9, end of ref. 142 closer to ref. 146) coupled to said handle. The drive assembly includes a stop member (Fig. 10, ref. 151) coupled to said stem member for controlling the depth to which said brush member can be advanced into said target site (since when the stop member abuts tissue, it will prevent the brush member from moving forward). The cannula includes a lip member (Fig. 10, end of ref. 144, left side) at a distal end thereof dimensioned to retract at least one of said neural tissue, dura tissue, and vasculature adjacent to said spine. The inner lumen of said cannula and said brush member have approximately the same cross-sectional shape (Fig. 10). The protector comprises a retractor (Fig. 21, ref. 74) having at least one blade member (Fig. 21, ref. 78) (column 7, line 54) for establishing a barrier between said brush member and said body tissue adjacent to said entrance. The body tissue adjacent to said entrance includes at least one of neural tissue and dura tissue of the spine (Fig. 25) and wherein said retractor includes a first blade member (Fig. 21, ref. 78) for retracting said neural tissue. The surgical target site is a vertebral body (Fig. 26), and wherein said brush member is dimensioned to be introduced into said vertebral body (Fig. 26) to receive, carry, and remove osseous material (since osseous material can be moved by the brush when it is spinning, and can be removed when the brush is removed, since some osseous material will stick to the brush).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10, 14-26, 28-30 and 36-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ouchi (US Pat. 5,899,850).

With regards to claims 8, 10, 13 and 16, Ouchi discloses the claimed invention except for the brush member having a diameter from 0.082 to 1.225 inches; the stem member having a diameter from 0.125 to 0.250 inches; the stem member having a length of from 1 to 24 inches; and the bristle members having a diameter from 0.002 to 0.100 inches. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have constructed the brush member of Ouchi having a diameter from 0.082 to 1.225 inches; the stem member of Ouchi having a diameter from 0.125 to 0.250 inches; the stem member of Ouchi having a length of from 1 to 24 inches and includes depth indicia and the bristle members having a diameter from 0.002 to 0.100 inches, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

With regards to claims 14 and 15, Ouchi discloses the claimed invention except for the bristle members comprising one of metal and plastic; the bristle members

Art Unit: 3733

comprising one of stainless steel wire, carbon-tempered steel wire, non-ferrous wire, and synthetic wire. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have constructed the bristle members of Ouchi comprising one of metal and plastic; the bristle members comprising one of stainless steel wire, carbon-tempered steel wire, non-ferrous wire, and synthetic wire, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Claims 1-10, 13-26, 28-30 and 36-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ouchi (US Pat. 5,899,850) in view of Davis (US Pat. 5,190,548).

Ouchi discloses the claimed invention except for the stem member including depth indicia.

Davis discloses a stem member (Fig. 1, ref. 10) that includes depth indicia (Fig. 1, ref. 26), which are used for indicating the depth of a cutting element in bone (column 4, lines 2-5).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have constructed the stem member of Ouchi with the depth indicia of Davis, in order to allow one to view the stem member and see what depth it has been placed into a bone (Davis, column 4, lines 2-5).

Art Unit: 3733

Claims 1-10, 12, 14-26, 28-30 and 36-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ouchi (US Pat. 5,899,850) in view of Taravel (US Pat. 4,633,542).

Ouchi discloses the claimed invention except for at least a portion of the bristle members being retractable within the stem member.

Taravel discloses bristle members (Fig. 3, near ref. 18) being retractable within a stem member (Fig. 3, ref. 6), in order to allow the bristles to continuously match the shape of the surface to be brushed (column 1, lines 32-38).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have constructed the bristles of Ouchi to be retractable within the stem member of Ouchi as taught by Taravel, in order to allow the bristle members to continuously match the shape of the surface to be brushed (Taravel, column 1, lines 32-38).

Claims 1-10, 14-26 and 28-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ouchi (US Pat. 5,899,850) in view of Ouchi (US Pat. 6,210,377 B1).

Ouchi (US Pat. 5,899,850) discloses the claimed invention except for the retractor having at least one blade member; and wherein the retractor includes a first blade member for retracting said neural tissue and a second blade member for retracting said dura tissue. The first blade member and second blade member have a fixed angle therebetween. The first blade member and second blade member have a variable angle therebetween.

Ouchi (US Pat. 6,210,377 B1) discloses placing a blade on the end of a retractor (column 21, lines 13-16), in order to assist in proper insertion of other devices through the retractor (column 21, lines 7-12).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have constructed the retractor of Ouchi (US Pat. 5,899,850) with the blade of Ouchi (US Pat. 6,210,377 B1), in order to assist in proper insertion of other devices through the retractor (column 21, lines 7-12). By constructing the device in this manner, the retractor of Ouchi (US Pat. 5,899,850) would then be provided with two bladed members (e.g. a first blade member and a second blade member), since the end of the retractor of Ouchi (US Pat. 5,899,850) is split in two different sections (Fig. 2B, ref. 14A). The two sections would be capable of remaining stationary to each other, or moving relative to each other (column 8, lines 47-54).

Claims 1-11, 14-27, 28-30 and 36-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ouchi (US Pat. 5,899,850) in view of Worthen et al. (US Pat. 5,445,164).

Ouchi discloses the claimed invention except for a quick-connect coupling for engaging with at least one of a handle and an extension member.

Worthen et al. disclose a quick-connect coupling assembly for engaging with at least one of a handle and an extension member (column 1, lines 37-39), which is used to quickly detach the components from each other (column 1, lines 37-39).

Art Unit: 3733

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have constructed the device of Ouchi with the quick-connect coupling assembly for engaging with at least one of a handle and an extension member of Worthen et al., in order to allow one to quickly detach the components from each other (column 1, lines 37-39).

Claims 40-47, 49-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reiley et al. (US Pat. 6,440,138).

With regards to claims 53-56 Reiley et al. disclose the claimed invention except for a second blade member. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have constructed the device of Reiley et al. with a second blade member, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Claims 40-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reiley et al. (US Pat. 6,440,138) in view of Worthen et al. (US Pat. 5,445,164).

Reiley et al. discloses the claimed invention except for the manual drive assembly including a quick-connect coupling assembly for releasable connection to said stem member.

Art Unit: 3733

Worthen et al. disclose a quick-connect coupling assembly for releasable connection to a stem member (column 1, lines 37-39), which is used to quickly detach the components from each other (column 1, lines 37-39).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have constructed the manual drive assembly of Reiley et al. with the quick-connect coupling assembly for releasable connection to a stem member of Worthen et al., in order to allow one to quickly detach the components from each other (column 1, lines 37-39).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Please see attached PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerry Cumberledge whose telephone number is (571) 272-2289. The examiner can normally be reached on Monday - Friday, 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3733

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JLC


CORRINE McDERMOTT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700